Supreme Court, U.S.
FILED
SEP 22 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1708

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

STATE OF CALIFORNIA, et al.,
Appellants,

vs.

CABAZON BAND OF MISSION INDIANS, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE SAN MANUEL BAND OF MISSION INDIANS AS AMICUS CURIAE IN SUPPORT OF APPELLEES

Law offices
NEIMAN BILLET ALBALA & LEVINE
JEROME L. LEVINE
DAVID A. LASH
Suite 1908
10960 Wilshire Boulevard
Los Angeles, California 90024-3877
(213) 824-5100

Attorneys for Amicus Curiae San Manuel Band of Mission Indians

Bowne of Los Angeles, Inc., Law Printers (213) BOWNE CO

TABLE OF CONTENTS

Page

I

Interest Of Amicus Curiae 1

II

Introduction And Summary Of Argument 3

Argument 6

III

Appellants Are Incorrect In Their Assertion That Without State Control, Bingo On Indian Reservations Would Create A Gap In Law Enforcement 6

IV

The Cabazon Court Followed A Traditional Analysis, Consistent With This Court's Holdings In Bryan v. Itasca County and Rice v. Rehner, In Ruling That California's Bingo Statutes Cannot Be Applied To Tribal Bingo Conducted For Charitable Purposes On Indian Reservations Under Either The Criminal Or Civil Provisions Of Public Law 280 15

A. The Criminal Provisions of Public Law 280 16

B. The Civil Provisions of Public Law 280 26

V

Conclusion 31

TABLE OF AUTHORITIES CITED

Cases

Page

A.K. Management Company v. San Manuel Band of Mission Indians, 789 F.2d 785 (9th Cir. 1986) .. 13

Barona Group of Capitan Grande Band, etc. v. Duffy, 694 F.2d 1185 (9th Cir. 1982) 15, 17, 18, 25, 26, 29, 30, 31

Bryan v. Itasca County, 426 U.S. 373 (1976) 5, 14, 15, 16, 18, 19, 20, 21, 26, 27, 28, 29, 30, 31

Cabazon Band of Mission Indians v. County of Riverside, 783 F.2d 900 (9th Cir. 1986) 3, 5, 15, 16, 17, 18, 26, 29, 31, 32

Carroll v. State, 361 So.2d 144 (Fla. 1978) 23

Iowa Tribe of Indians of Kansas and Nebraska v. Kansas, 787 F.2d 1434 (10th Cir. 1986) 10, 22

Johnson v. Yellow Cab Transit Company, 321 U.S. 383 (1944) 18, 19, 21

Mashentucket Pequot Tribe v. McGuigan, 13 ILR 3031 (D. Conn. 1986) 29

McClanahan v. Arizona State Tax Comm'n., 411 U.S. 164 (1973) 24, 30

Moore v. United States, 160 U.S. 268 (1895) 11

Oklahoma ex rel. May v. Seneca-Cayuga Tribe of Oklahoma, 711 P.2d 77 (1985) 23

Oneida Tribe of Indians of Wisconsin v. State of Wisconsin, 518 F.Supp. 712 (W.D. Wisc. 1981) 21, 24, 25, 29, 31

Rice v. Rehner, 463 U.S. 713 (1983) 2, 5, 15, 17, 19, 21, 30, 31

In re Sanborn, 148 U.S. 222 (1893) 13

TABLE OF AUTHORITIES CITED

CASES

	Page
Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020 (1982)	22, 23, 25, 29, 31
Seneca-Cayuga Tribe of Oklahoma v. Oklahoma, 13 ILR 3103 (N.D. Okla. 1986)	23
United States v. DeLuna, 763 F.2d 897 (8th Cir. 1985)	11
United States v. Farris, 624 F.2d 890 (9th Cir. 1980), cert. denied, 449 U.S. 1111 (1981)	21, 22, 25, 26, 29, 31
United States v. Levenson, 524 F.Supp. 781 (S.D.N.Y. 1981)	11
United States v. Marcyes, 557 F.2d 1361 (9th Cir. 1977)	14, 20, 21, 22, 29, 31
Wisconsin Winnebago Business Committee v. Koberstein & Ho-Chunk Management Corporation, 762 F.2d 613 (7th Cir. 1985)	13
Woxberg v. United States, 329 F.2d 284 (4th Cir. 1964)	11

Constitution

California Constitution, art. IV, § 19	4, 6

Miscellaneous

Bakal, Charity U.S.A., An Investigation Into The Hidden World Of Multi-Billion Dollar Charity Industry (Times Books, 1979) pp. 333, 334, 335	7, 8
Black's Law Dictionary (4th Ed., Rev.) p. 1112	22
Encyclopaedia Britannica, p. 824	8, 9

TABLE OF AUTHORITIES CITED

MISCELLANEOUS

	Page
Gambling In America, Final Report Of The Commission On The Review Of The National Policy Towards Gambling (Washington, 1976)	7
House Report 1920	4, 14
Israel and Smithson, Indian Taxation, Tribal Sovereignty and Economic Development, 94 N.D.L. Rev. 267, 296 (1973)	27
Senate and Assembly Committees on Governmental Organization, Transcript of Proceedings, Interim Hearing on Bingo Regulations, November 2, 1983	9, 10, 12
Senate Report 902	4, 14

Statutes

California Penal Code, Sec. 326.5	7
California Penal Code, Sec. 326.5(b)	9
California Penal Code, Sec. 326.5(h)	11
California Penal Code, Sec. 326.5(o)	12
California Penal Code, Sec. 365.5(j)	12
United States Code, Title 18, Sec. 13	20
United States Code, Title 18, Sec. 468	18
United States Code, Title 18, Sec. 1161	19, 30, 31
United States Code, Title 18, Sec. 1162	3, 5, 14, 17
United States Code, Title 18, Sec. 1162(a)	16, 17
United States Code, Title 18, Sec. 1955	5, 21, 25
United States Code, Title 25, Sec. 81	13
United States Code, Title 26, Sec. 7201	11, 14
United States Code, Title 28, Sec. 1360	3, 5, 16, 26

No. 85-1708

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

STATE OF CALIFORNIA, et al.,
Appellants,

VS.

CABAZON BAND OF MISSION INDIANS, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE SAN MANUEL BAND OF MISSION INDIANS AS AMICUS CURIAE IN SUPPORT OF APPELLEES

I
INTEREST OF AMICUS CURIAE

Amicus Curiae San Manuel Band of Mission Indians ("Tribe") is a federally recognized Indian tribe whose reservation is near the County of San Bernardino, State of California. The reservation is comprised of approximately six hundred fifty acres, of which only approximately eight acres lie on flat, commercially usable land. The remainder of the reservation consists of steep mountain terrain. Until recently, the Tribe has had no method of generating income or providing employment for its families, many of whom are on welfare.

In July, 1986, the Band commenced playing bingo on its reservation pursuant to a tribal ordinance authorizing the Tribe to engage in bingo for tribal charitable purposes only. The revenue the Tribe hopes to generate from that activity will be used to fund programs for the general health, welfare and education of the tribal community. Nearly eighty percent of the Tribe members, many of whom were on unemployment rolls for years before the bingo project began, immediately became employed and are receiving their first vocational training of any kind.

The Tribe, like other tribes throughout the country engaging in charitable bingo to raise funds and provide jobs for the general welfare of their members, faces suits[1] seeking to bring such fund-raising activity under State and local governmental control. This despite the fact that the cases frequently cited by appellants, including *Rice v. Rehner,* 463 U.S. 713 (1983), and its predecessors, compel an opposite result. Since this case focuses upon California's attempt to now obtain jurisdiction over a matter which will directly affect the ability of the Tribe to generate resources without State or federal aid for educational, employment and other Tribal purposes, the Tribe's interest in its outcome is acute.

II

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief will argue that every case relied on by Appellants and *amici* who join with them, and the deci-

---

[1] *City of San Bernardino v. San Manuel Tribe of Mission Indians,* Central District of California, Case No. CV 85-6899 WJR (Bx); *City of San Bernardino v. Area Director, Sacramento Area Office, Bureau of Indian Affairs,* Docket No. IBIA 86-22-A.

sion below,[2] demonstrate a consistent approach in determining when and under what circumstances State law will be applied to activities on Indian reservations under Public Law 83-280, 67 Stat. 588 (1953) ("Pub.L.").[3]

Perhaps even more importantly, however, is the need to establish first that there is nothing in the result below which leaves any gap in the State's concerns regarding gambling[4] or the ability of law enforcement to protect against organized crime on Indian reservations. Indeed, it is in the tribe's best interest that adequate protection against such conduct is available, and ample State and federal law exists to assure that it is.

Bingo has traditionally been separated in the minds of the public from "gambling" as that term is generally used, e.g., casino-type gaming (blackjack, roulette, craps and the like), even though the inclusion of bingo within the technical definition of gambling cannot be denied. Bingo is played for fund-raising purposes under a variety of rules and regulations in virtually every state by religious organizations, fraternal groups, senior citizens groups, and by many of the states themselves, as well as at most American, British and other armed forces bases throughout the world. An Air Force Base located just a few miles from appellant City of Riverside's borders

---

[2] *Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900, 902-903 (9th Cir. 1986).

[3] 18 U.S.C. § 1162, 28 U.S.C. § 1360.

[4] Appellants repeatedly refer to the subject of California's "gambling" laws (Brief of the Appellants, pp. 8, 22), whereas the issues herein concern only the legally and historically distinguishable games of bingo and a limited form of state-sanctioned card games which are played on the Cabazon reservation. Since Amicus and most tribes interested in these issues from a fund-raising viewpoint are only involved in bingo this brief will address that game only.

regularly awards bingo prizes which are substantially greater than those permitted under California law. It is therefore more than happenstance that California's voters adopted bingo as an acceptable way to raise funds for charitable purposes without specifying any particular guidelines. (Calif. Const., art. IV, § 19.)

Charitable bingo is not insignificant economically. Last year alone the estimated proceeds from charitable bingo in the United States, excluding bingo played on military and Indian reservations, exceeded a billion dollars.[4a] Therefore, if bingo, in particular, attracts organized crime at all, which we dispute, the States should be as concerned about State-sanctioned bingo as with Indian bingo, since both generate large sums of cash revenue. Yet the measures taken by California to protect against criminal involvement in its own bingo games are far less than those imposed on tribes by the federal government, particularly when bingo is played on Indian reservations with the managerial assistance of non-Indians. Additional guidelines are also pending in Congress.[5]

It is in the foregoing context, which could be readily examined by the lower courts, that it was correctly determined the conduct of bingo games by Indian tribes on their reservation for tribal fund-raising purposes is not against California's public policy. Utilizing long-standing principles of statutory construction, as this Court did in deciding *Bryan v. Itasca County,* 426 U.S. 373 (1976) and *Rice v. Rehner, supra,* the court properly found that California's statutes regulating bingo do not fall within the scope of the criminal provisions of Pub.L. 280 (18 U.S.C. § 1162), which control State jurisdiction over Tri-

---

[4a] *Gaming & Wagering Business,* Vol. 7, No. 7 (July, 1986), p.28.

[5] H.R. 1920, S. 902.

bal activities,[6] since that statute was directed at truly criminal conduct in the common law sense and not at laws which are merely a part of a State's regulatory scheme.[7] Similarly, California's bingo laws are not the kind of laws Congress intended would be applied under Pub.L. 280's civil provisions (28 U.S.C. § 1360), since they are merely regulatory in nature. *Bryan v. Itasca County, supra.* Since Pub.L. 280 controls State criminal and civil jurisdiction over tribal activities in states which are subject to its provisions, California's bingo regulations cannot be imposed upon tribal bingo conducted on Indian reservations within its borders.

ARGUMENT

III

APPELLANTS ARE INCORRECT IN THEIR ASSERTION THAT WITHOUT STATE CONTROL, BINGO ON INDIAN RESERVATIONS WOULD CREATE A GAP IN LAW ENFORCEMENT

Appellants and their supporting *amici* argue that without the application of State regulation, bingo games

---

[6]We disagree with the State's contention that if Pub.L. 280 does not apply, principles of "federal common law" nevertheless confer such jurisdiction. Were that the case, then there simply would be no need for Pub.L. 280, nor would this Court's limitations on Pub.L. 280's importation of a State's civil laws which are regulatory in nature have any meaning. *Bryan v. Itasca County, supra.* The analysis of Pub.L. 280's preemptive effect has been briefed extensively by appellees and other *amici* and will not be repeated here.

[7]Similar reasoning was applied by the court below concerning the exclusion of California bingo statutes from the meaning of the phrase "gambling business which . . . is a violation of the law of a State," under the Organized Crime Control Act (18 USC § 1955 (1976) ("OCCA"), *Cabazon, supra,* 783 F.2d at 903.

conducted for charitable purposes on Indian reservations would be unusually vulnerable to organized crime infiltration and other criminal conduct. Brief of the Appellants at 8, 26 and 29. The apparent concern is that the amount of cash revenue which might be generated by these games would create an atmosphere in which embezzlement, skimming, and fraud could flourish and that absent State intervention, there would be no way to deter such conduct. *Id.*, at 8, 25. Because of the importance placed on this premise by Appellants as a rationale for resolving any doubt in their favor, we feel it necessary to address the realities of Appellants' concern before disputing their assertion that they have a legal right to control charitable bingo on Indian reservations under Pub.L. 280.

The State's fear of Indian bingo-related crime is placed in its proper perspective when one examines the degree to which State-sanctioned bingo is now permitted to exist and flourish. In 1976, California voters approved Proposition 9 by more than a 2-to-1 margin, which amended the State Constitution to allow the Legislature to authorize cities and counties to permit the playing of bingo for charitable purposes. Calif. Const., art. IV, § 19. No other limits were placed in the Constitution. *Id.* Thus, all regulation was left to State and local control. *Id.* State legislation was enacted which set some limitations but additional regulation was left to Cities and Counties. *California Penal Code*, § 326.5. The regulations adopted by the Legislature include a limitation on the size of the prizes and restraints on those authorized to operate the games.[8]

---

[8] "(h) A bingo game shall be operated and staffed only by members of the authorized organization which organized it. . . .

. . . (n) The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars ($250) in cash

The selection of bingo as a fund-raising tool was not surprising. Bingo holds a unique position historically and has often been treated separately from true gambling. Because it is usually associated with charitable, public or social organizations, it has been generally thought of as more of a fund-raising and social activity than as a traditional form of gambling such as that found in Las Vegas casinos.[9] *See, Gambling In America, Final Report Of The Commission On The Review Of The National Policy Towards Gambling,* Washington, 1976. Indeed, such activities have been an important and publicly accepted part of our culture. *See, Charity U.S.A., An Investigation Into The Hidden World Of Multi-Billion Dollar Charity Industry,* Bakal (Times Books, 1979), p. 333. Lotteries, which are similar to bingo, helped to build Harvard, Yale, Princeton, Brown, Dartmouth and Columbia. *Id.* Many early churches, bridges, canals and roads were similarly financed. *Id.* Some of the funding for the American War of Independence came directly from such activities, and had among its proponents George Washington, Benjamin Franklin, and Thomas Jefferson. *Id.,* at 334.

Catholic churches employed bingo in the United States as far back as the early 1800's. The Church made it so popular that by the 1920's it had come to be identified as a "Catholic" game. *Id.,* at 335. Bingo achieved its height of popularity during the American Depression, when many people were unable to participate in higher-priced forms of recreation. They turned to bingo as an inexpensive and popularly accepted alternative. *See, Encyclopaedia Britannica,* p. 824.

---

or kind, or both, for each separate game which is held." *California Penal Code,* § 326.5 (1981).

[9]In fact, California Constitution, art. IV, § 19, specifically prohibits "casinos of the type currently operating in Nevada and New Jersey."

From these beginnings, bingo has become associated with fund-raising for society's most respected institutions, including schools, churches, synagogues, hospitals, fraternal orders, civic clubs, veterans groups and volunteer firemen. *Charity U.S.A. supra,* at 334. Signs indicating "Bingo Tonight" have become commonplace throughout the United States, even in States where gambling (except horse-racing and lotteries) is strictly outlawed. For example, it was reported that in one such State which had no regulations directed at bingo in particular, many groups nevertheless openly advertise, on billboards and in phone directories, bingo games with cash prizes of thousands of dollars per night. Law enforcement apparently does not regard this as prohibited "gambling" or particularly worrisome because, as one police official put it, "public sympathy is with the charitable organizations." *Id.* at 334.

Bingo for prizes is also seen as an acceptable way to provide a source of social satisfaction for many people. Senior citizens, for example, are often attracted because of the opportunity it provides to meet and converse with one another. Senate And Assembly Committees On Governmental Organization, *Transcript of Proceedings, Interim Hearing on Bingo Regulations,* November 2, 1983, pp. 132, 170 (hereinafter "Calif. Legis. Proceedings"). California's legislative scheme even added "senior citizens' associations" to the otherwise tax-exempt groups which are authorized to conduct bingo games. *California Penal Code,* § 326.5(b).

Bingo games have been conducted by the United States government on military reservations in California since at least 1951. *See, Calif. Legis. Proceedings,* Testimony of John Hawley, President of Western Gift Distributors, p. 108. In fact, bingo games can be found on American

military bases worldwide. *Id.*, at p. 109.[10] At Norton Air Force Base, which borders San Bernardino, California, members and guests of its NCO Club are invited to play bingo games in which prizes far exceed those permitted under California law, including prizes of a $2,500 savings bond or a percentage, or sometimes all, of the monies collected for playing that game. *See* Appendix A.

Closely related to bingo, of course, are lotteries that have been used for raising funds for public purposes for hundreds of years. *See, Charity U.S.A., supra.* Such lotteries currently involve revenues and prizes in astronomical sums.[11]

The foregoing demonstrates that the *act* of engaging in these special forms of gaming is far from being "so fundamentally evil" that the State has sought to prohibit them within its borders as contravening public policy. *Iowa Tribe of Indians of Kansas and Nebraska v. Kansas,* 787 F.2d 1434, 1436, n. 1 (10th Cir. 1986). Bingo and lotteries for fund-raising purposes are thus not only sanctioned by the State of California itself, but also by a substantial number of its organizations within its boundaries that are dedicated to preserving the moral, ethical and religious values of its members. It is in this context, then, that charitable bingo is conducted in California on a large-scale basis.

In 1983, more than $30 million in gross revenues were collected at bingo games conducted in the City of Los

---

[10]Moreover, bingo is the only gaming activity sanctioned and permitted by the British Armed Services on their military bases. *Encyclopaedia Britannica,* p. 824.

[11]A recent winner in the California lottery won a $10,000,000 prize, and higher prizes are well known to have been awarded in other states.

Angeles alone. *See, Calif. Legis. Proceedings,* p. 8 (testimony of Robert D. Burns, General Manager, Los Angeles City Department of Social Services). Some charities have been known to run as many as fifty games in one session. *Id.,* at 138. A single game run at a school in Sacramento, California, grossed more than $2.2 million in one year. *Id.,* at 144.

Bingo "centers" have begun to emerge in different parts of California. For instance, in Sacramento various church groups and charities rent space in a bingo center capable of running nine different games during the same evening. In Los Angeles, a particular charity draws approximately 600 people per session and runs four or five times weekly. *Id.,* at 18. Jack Scheidegger, legislative liaison for the State Attorney General, testified in 1983 that under the current law large-scale bingo operations are emerging. Some charitable organizations pay up to $62,000 per year to lease space in bingo centers for approximately ten hours per week. *Id.,* at 25.

Notwithstanding the large amount of cash involved in these games, the State does little to control them in a way that would have any meaningful impact on organized crime control or criminal activity in general, if that were really a concern. While the size of the prizes per game is limited, the number of games played per evening, admission prices charged, and the number of persons who may play each game is virtually unrestricted. As seen by the statistics above, this results in substantial sums of cash changing hands, which is alleged to be the attraction to organized crime because of its supposed potential for skimming and embezzlement.[12] *But in California there is*

---

[12]Examples of skimming can be found in *United States v. Levenson,* 524 F. Supp. 781 (S.D.N.Y. 1981), and *United States v. DeLuna,* 763

no commission, board or other State body which supervises the operation of bingo games in any way. Nor do California's statutes address the identity, backgrounds or qualifications of those who operate the games, other than that they be members of the organization for whose benefit the game is being played. *California Penal Code,* § 326.5(h). While one would hope that all members of any religious, civic or other organization purporting to use the proceeds from its bingo games for charitable purposes were free from criminal ties or intent, common sense would tell us otherwise. Although the statutory scheme requires that the proceeds from the game be retained in a special fund and not commingled with the organization's other funds (*California Penal Code,* § 365.5(j)), there are no restrictions on the way in which the funds are to be collected, handled, counted, and the like. In California, only fourteen percent of bingo-playing cities contacted by the State legislature in 1983 had any mechanism for auditing the games within their particular jurisdictions. Only five counties within the State require any audits at all, meaning that sixty-five percent of the counties state-wide have no auditing requirements of any kind. *See, Calif. Legis. Proceedings, supra,* comments of Co-Chairman Richard Alatorre, page 120.

Finally, the sale of "pull tabs", which are cards having numbers or symbols concealed and preprinted in a manner providing for distribution of prizes (presumably up to $250 each), is expressly permitted at bingo games. *Cali-*

F.2d 897 (8th Cir. 1985) and involve the removal of cash proceeds prior to counting or reporting. This results in a wilful evasion of federal tax laws, 26 U.S.C. § 7201 *et seq.* Embezzlement is "the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come." *Moore v. United States,* 160 U.S. 268, 269-270 (1895); *Woxberg v. United States,* 329 F.2d 284 (4th Cir. 1964).

fornia Penal Code, § 326.5(o). There is no limit on the number of such cards which may be handled or sold during any given bingo session.

In sum, the State's interest in preventing the entry of organized crime, which traditionally is linked with skimming and other crimes relating to cash, is not prevented by the present regulatory scheme, since no safeguards against such practices are addressed.

On the other hand, the basic concern that bingo, because of its involvement with cash, will attract organized crime to any greater degree than any other type of cash intensive enterprise (e.g. movie theaters, fast food stores, and the like) is unfounded. Unlike casino-type gambling where every bet is a quick, unreceipted cash exchange, bingo players must purchase bingo cards or tabs in advance to play. Thus all revenues can be documented, thereby minimizing the opportunities for skimming and embezzlement if reasonable management safeguards required of any business are employed. And where the fear is that organized crime will nevertheless have a special opportunity to infiltrate reservations when tribes require non-tribal managerial assistance (although the States never explain why the same opportunity is not feared where non-Indians are involved in other tribal activities), the federal government already does far more than California has ever considered doing in protecting the interests of both Indian tribes and the general public against possible criminal conduct. 25 U.S.C. § 81 requires that contracts between Indian tribes and non-Indians relative to Indian lands or properties be approved by the Secretary of the Interior, and invalidates contracts that do not bear that approval. *In re Sanborn,* 148 U.S. 222, (1893). Several recent appellate court decisions have specifically ruled that management contracts between tribes and non-

Indians hired to assist the tribe in managing and operating bingo games are, pursuant to 25 U.S.C. § 81, null and void absent the required approval. *A. K. Management Company v. San Manuel Band of Mission Indians,* 789 F.2d 785 (9th Cir. 1986); *Wisconsin Winnebago Business Committee v. Koberstein & Ho-Chunk Management Corporation,* 762 F.2d 613 (7th Cir. 1985).

The federal approval process involves thorough background investigations of management personnel, including a Department of Justice inquiry to check for possible criminal associations. *See,* Appellee's Motion to Dismiss Appeal or Affirm Judgment, Appendix, p. 66a. The management agreements must also fix a limited time to run, specify the amount of the contractor's fee, include a list of all parties in interest to the contract plus their respective residence and business addresses, require the tribe to receive monthly statements showing revenue and expenses, provide for an independent audit by a certified public accountant, set forth accounting procedures, allow the tribe access to all books and records, establish a cash management system adequate to safeguard the funds of the operation, and provide the tribe the right to oversee such a system. *Id.,* at 64a-68a. This process therefore involves far more scrutiny than would be provided under California law, while at the same time recognizing that many tribes may lack the expertise to engage in fundraising activities without such outside assistance. That need would be frustrated totally if Tribes were subjected to California's limitations on the operation of charitable bingo games, which in no way take into account the unique factors that distinguish Tribes from other organizations and governing bodies. Indeed, Congress has moved to formalize such regulations in its introduction and present consideration of H.R. 1920 and S.902.

Moreover, the absence of State control over Indian bingo would in no way leave a law enforcement gap should problems arise. Skimming is obviously a federal crime under the Internal Revenue Code and other federal and State laws, and no one has seriously contended that there is inadequate criminal jurisdiction to scrutinize and prosecute such activity. *See, e.g.,* 26 U.S.C. § 7201. More common crimes, such as fraud and embezzlement, are, of course, subject to State jurisdiction under Pub.L. 280.[13]

These are *not,* therefore, issues which are truly involved in this case, although Appellants and *amici* have tried to make it seem that the tribes, if successful, will create havens of immunity from criminal sanctions. The fact the record is devoid of any evidence of uncontrolled criminal conduct associated with bingo, either off the reservation or on, despite the fact that bingo has been played on Indian reservations in California and other States for several years and by other organizations off the reservations for much longer, simply underscores that reality. The court below correctly determined that the fear of criminal activity was entitled to little if any consideration.[14]

---

[13]18 U.S.C. 1162. *See,* e.g., *United States v. Marcyes,* 557 F.2d 1361, 1364 (9th Cir. 1977).

[14]783 F.2d at 904.

IV

THE *CABAZON* COURT FOLLOWED A TRADITIONAL ANALYSIS, CONSISTENT WITH THIS COURT'S HOLDINGS IN *BRYAN V. ITASCA COUNTY* AND *RICE V. REHNER*, IN RULING THAT CALIFORNIA'S BINGO STATUTES CANNOT BE APPLIED TO TRIBAL BINGO CONDUCTED FOR CHARITABLE PURPOSES ON INDIAN RESERVATIONS UNDER EITHER THE CRIMINAL OR CIVIL PROVISIONS OF PUBLIC LAW 280

In *Cabazon*, appellants argued that California's bingo statutes were applicable to the reservation under the criminal and civil provisions of Pub. L. 280. The court rejected appellants' claim. In reaching its result, the court followed its earlier decision in *Barona Group of Capitan Grande Band, etc. v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), which held California's bingo laws could not be applied to tribal activities on a reservation. The analysis employed by the court was the same utilized by virtually every court which has had to determine if a State law could be imposed on a reservation.

With respect to Pub.L. 280, the court in *Cabazon* and *Barona* first determined that California's bingo statutes did not fall within the kind of "crime" intended to be included within that statute. The court then concluded that as a law which was civil and primarily regulatory in nature, application of the bingo statutes on Indian reservations under Pub.L. 280 would also be contrary to and outside the scope of that law when civil provisions of Pub. L. 280 are viewed against long-established principles of tribal sovereignty and self-government.

A. The Criminal Provisions of Public Law 280

Public Law 280 is divided into two sections, one pertaining to criminal matters (codified at 18 U.S.C. § 1162(a)), and the other to civil laws (28 U.S.C. 1360). Taken together, these sections represent an express delegation by Congress of State criminal and civil jurisdiction over reservations in states such as California which are subject to its terms. Although there has been much debate over whether laws coming under its mane are "criminal/prohibitory" or "civil/regulatory" in nature, an analysis of the cases in the area, including those cited by Appellants which are claimed to be in conflict with, or rejecting of, that distinction, reveal a complete consistency in approach by all courts which have examined Pub. L. 280 and other federal statutes purporting to apply State law to reservations, regardless of the outcome of the particular cases. The only difference among these decisions would appear to be factual in nature.

Indeed, we see no reason to go beyond analyzing these cases on the basis of 1) whether the State statute in question falls within the federal statute's meaning of a crime and, if not, 2) whether as a civil law it is regulatory in nature so as to conflict with the principles enunciated in *Bryan v. Itasca County*. Thus, we submit that such an analysis represents the only meaningful distinction between the terms "criminal/prohibitory" and "civil/regulatory." In making these determinations, this Court has clearly announced that any analysis of Congressional intent in enacting those statutes must be undertaken against a backdrop of tribal sovereignty. *Rice v. Rehner, supra,* 463 U.S. at 719.

Section 2(a) of Pub.L. 280, as codified at 18 U.S.C. § 1162(a), provides:

> "a) Each of the States . . . listed in the following table shall have jurisdiction over *offenses* committed by or against Indians in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over *offenses* committed elsewhere within the State . . . and the *criminal laws* of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State . . . : California . . . all Indian country within the State." [Emphasis added.]

The first question in analyzing the applicability of Pub.L. 280 in the instant case is therefore whether or not California's bingo regulatory scheme encompasses the kinds of "offenses" and "criminal laws" intended by Congress in enacting that statute. In determining that it does not, the Ninth Circuit in *Cabazon* followed its earlier decision, in *Barona Group of Capitan Grande Band, etc. v. Duffy, supra,* 694 F.2d at 1187, which had this exact issue before it. *Barona* held that California's bingo statutes were not the kind of laws intended by Congress to be swept under the criminal provisions of Pub.L. 280 (18 U.S.C. § 1162). Finding they were not, and were therefore civil in nature, the court further held they also were not the kind of civil laws intended by Congress to be included within the civil scope of Pub.L. 280, since they simply regulated the licensing and playing of bingo and thus fell within the proscription of *Bryan. Barona Group of Capitan Band, etc.* v. *Duffy, supra,* 694 F.2d at 1184.

The need for the kind of analyses employed in *Bryan* and carried forward through *Barona* and *Cabazon* was explained in this Court's opinion in *Johnson v. Yellow Cab Transit Company,* 321 U.S. 383, (1944). That case focused on various Oklahoma statutes prohibiting the possession and transportation of liquor and whether or not they

could be applied under the assimilative crimes statute (18 U.S.C. § 468) to deliveries of liquor which were clearly intended for a federal military reservation within the State, which Oklahoma had intercepted. The carrier sued, alleging the seizure constituted an unlawful interference with its authorized interstate transportation. Oklahoma contended that the assimilative crime statute applied. That federal statute stated that anyone who committed an act within a federal enclave, which act, if occurring within the state in which the enclave is located, "would be penal," would "be deemed guilty of a like offense and be subject to a like punishment." *Id.*, at 388-389. Oklahoma argued that all of its statutes relating to liquor were enforceable under those provisions, including penalties imposed for violating its import regulations, and that therefore the shipment of liquor to the military reservation located within the State of Oklahoma was subject to Oklahoma criminal jurisdiction.

The Court stated that while the issues could not be finally determined because all parties, particularly the United States, were not before the Court, there was serious doubt about whether the mere fact that the Oklahoma liquor statutes were criminal *on their face* necessarily required their adoption under the language of the federal statute which referred to the State's "penal" laws:

> "The Oklahoma liquor statutes pertaining to liquor imports provide one illustration of the difficulties inherent in this question. These penal statutes are designed to enforce a system of licensing such imports by special permits issued by a state agency. Okla. Stat. (1941) title 37, §§ 41-48. Importation of liquors without a special permit is made penal. *Id.*, §§ 41, 46. To hold, therefore, that the assimilative

> crimes statute adopts Oklahoma's penal liquor laws the Court might further have to hold that that statute compels federal officials on the Fort Sill Reservation to apply for and obtain state permits before they can lawfully import any liquors for any purpose. And a strong argument might be made that *had Congress intended such a drastic result, it would have considered the problem and used more express language.*" Id., at 389, n.8. (Emphasis added.)[15]

In determining whether a federal law purporting to apply a State's criminal laws to federal territory is applicable to a *specific* State statute, *Yellow Cab* therefore makes the logical suggestion that the full ramification of adopting the State statute in question must be considered in light of the purpose and history of the relevant federal law. *Id.*, 321 U.S. at 389-390; *see also*, *Bryan v. Itasca County*, *supra*, 426 U.S. at 381; *Rice v. Rehner*, *supra*, 463 U.S. at 723-726. This becomes particularly important where adoption of a State law under the inclusion provisions of a general and somewhat ambiguous federal law such as Pub.L. 280 could undermine tribal sovereignty and self-government. *Bryan v. Itasca County*, *supra*, 426 U.S. at 388.[16]

---

[15]*Compare, Rice v. Rehner, supra*, 463 U.S. at 726, where this Court held, after taking into account the particular and unique history behind its adoption, that Congress did intend 18 U.S.C. § 1161 to require liquor sellers on Indian reservations to obtain State liquor licenses if necessary to comply with State laws.

[16]In that case, discussed in more detail *infra*, p. 86 et seq., this Court held that the provisions of Pub.L. 280 which refer to a State's civil laws were not meant to incorporate civil laws that would have the effect of regulating conduct in conflict with tribal self-government. *Bryan v. Itasca County*, *supra*, 426 U.S. at 388.

The willingness of courts to consider Congressional intent when deciding if a particular State statute is to be included within a federal law which purports to adopt State criminal law was addressed in *United States v. Marcyes, supra.* In that case two members of the Puyallup Indian reservation were accused of operating fireworks stands on a reservation which was open to the public. Some of the fireworks being sold were illegal under State law. The sellers were arrested and charged in district court under the Assimilative Crimes Act. 18 U.S.C. § 13. Defendants argued that the act only incorporated the general criminal code, or "prohibitory laws", of State and could not be used to enforce Washington's fireworks laws, which defendants argued were not truly criminal in nature but were merely civil laws regulating the sale and possession of fireworks. *Id.*, at 1364. Referring to *Bryan*, defendants additionally argued that the concept was even stronger because an Indian reservation and the attendant principles of tribal sovereignty were involved. *Id.* The Ninth Circuit rejected the argument, but not on its analytical basis. The court acknowledged that:

> "[A] strong argument exists that Congress did not intend to include the penal provisions of a state regulatory system within the ACA. The rationale for this argument is obvious; a state could thereby enforce its regulatory system on the federal jurisdiction by making criminal any failure to comply with those regulations (i.e., licenses, permit , etc.)." *Id.*, at 1364.[17]

---

[17]The court added the further qualification, however, that the mere fact that the law is not primarily for licensing purposes is not determinative. 557 F.2d at 1364.

Nevertheless, the court found that the Washington fireworks statutory scheme was in fact the kind of "penal law" envisioned under the Assimilative Crimes Act, since "its intent is to prohibit the general possession and/or sale of dangerous fireworks and is not primarily a licensing law." *Id.*, at 1364.

The importance of *Marcyes* is not that the court correctly or incorrectly determined that the fireworks statutes were the kind of penal laws referred to in the Assimilative Crimes Act; rather, *Marcyes* (as well as *Rice, Bryan* and *Yellow Cab*) demonstrates that federal courts must determine the contextual meaning of words such as "criminal" or "penal" in federal legislation in order to avoid the potentially anomalous results described in *Yellow Cab. See, also, Oneida Tribe of Indians of Wisconsin v. State of Wisconsin, supra*, 518 F. Supp. at 714. This is particularly true where Indian interests are concerned. *See, e.g., United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981); *United States v. Marcyes, supra.*

In *United States v. Farris, supra,* the Ninth Circuit conducted a similar analysis and concluded casino-type gambling on an Indian reservation was in violation of the Organized Crime Control Act of 1970, 84 Stat. 937,18 U.S.C. § 1955 ("OCCA"). That statute makes it a crime to engage in an illegal "gambling business" which "is a violation of the law of a state or political subdivision in which it is conducted." The court concluded under the facts that like the fireworks statute in *Marcyes*, the Washington law against professional gambling was truly criminal[18] within the meaning of the OCCA, despite the State

---

[18]Black's Law Dictionary provides definitions of those crimes which were considered at common law to be "malum in se" ("a wrong

law's exceptions. *Id.*, at 897. The lower court recognized the specific environment for organized crime which existed in casino type gambling[19] and found that the nature of the particular activity involved was against the public policy of the State of Washington and therefore constituted the kind of gambling business which was squarely within the meaning of the federal statute. *Id.*, at 897.

Consistent with the foregoing cases is *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982), which examined whether a set of Florida statutes permitting bingo games to be played by certain qualified organizations were "criminal" under Pub.L. 280, or, if civil, were regulatory so as to infringe on tribal rights. In order to first determine if the statutory scheme constituted a criminal prohibition under Pub.L. 280, the court examined "whether the operation of bingo games is prohibited as against the public policy of the state or merely regulated by the state." *Id.*, at 313. In doing so, the court examined various state court decisions which discussed the constitutionality of the bingo statute, observing that in *Carroll v. State,* 361 So. 2d 144 (Fla. 1978), "exercising this power to regulate, the legislature, in its wisdom, has seen fit to permit bingo as a form of recreation, a[illegible] at the same time, has allowed worthy

---

in itself, an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral and public law"), and those which were merely "malum prohibitum" ("a wrong prohibited; a thing which is wrong *because* prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law. Contrasted with *malum in se*.") *Black's Law Dictionary*, 4th Ed. Rev., p.1112. *See, Iowa Tribe of Indians of Kansas and Nebraska v. Kansas*, 787 F.2d 1434 (10th Cir. 1986) [the playing of bingo considered not to be "fundamentally evil"].

[19] *See*, discussion *supra*, at 14-16.

organizations to receive the benefits. (Citations omitted)". *Seminole Tribe of Florida v. Butterworth, supra,* 658 F.2d at 314. The Fifth Circuit determined that the underlying act of bingo was not against Florida's public policy and that therefore the bingo law was not criminal in nature within the meaning of Pub.L. 280. *Id.*, at 316. The court then analyzed the regulatory effect of the bingo laws and determined that if they were applied to reservations in Florida under the civil provision of Pub.L. 280, they would interfere with statutory policies of tribal self-government, which was beyond the scope of Congress' intent in enacting those provisions of Pub.L. 280. *Id.*, at 314-315.

Again, the particular result reached by the court in *Butterworth* is significant for the process employed: lower courts, with an opportunity to examine all of the facts surrounding the nature of the particular activity in question, the proposed form of regulation, and the potential interference with tribal sovereignty (not unlike the type of test suggested by amicus, State of Minnesota, at pages 21-23 of their brief) are in a proper position to determine whether or not, against a backdrop of strong policies in favor of tribal sovereignty and self-government, the State statutory scheme in question comes within the meaning of the federal statute being considered.

The same approach was illustrated in *Oneida Tribe of Indians of Wisconsin v. State of Wisconsin, supra.*[20] The district court expressly considered the following questions in determining whether Wisconsin's bingo laws conferred State jurisdiction under Pub. L. 280:

> "(1) whether Wisconsin's bingo laws are civil or criminal; and (2) what Congress intended when it

---

[20]518 F.Supp. 712 (W.D. Wisc. 1981).

> passed Public Law 280 and conferred jurisdiction on the State of Wisconsin to enforce its criminal laws in Indian country." *Id.*, at 714.

After considering the nature of the State regulations themselves and the factual context in which they were being applied, the court concluded that Wisconsin's bingo laws were civil rather than criminal under Pub.L. 280, and as such could not be imposed upon the reservation because they were merely regulatory in nature. *Id.*, at 719. The court found that the Wisconsin legislature had determined the act of bingo-playing to be generally beneficial and had "chosen to regulate rather than prohibit" such activity, thus removing the State statutory scheme from being considered "criminal" within the meaning of Pub.L. 280. *Id.*, at 719. The court admitted to a "certain uneasiness" in reaching this decision because it seemed a rather "mechanical approach," but when coupled with its review of the background against which the federal law had to be read, (see, *McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. 164) (1973), pronounced itself "satisfied that the conclusion reached on [the motion pending before the court] is based on sound principles of construction of laws pertaining to Indian tribes and of current policy regarding tribal independence." *Oneida, supra*, 518 F.Supp. at 719.

In 1982, the Ninth Circuit addressed the question of whether California's bingo laws fell within the criminal ambit of Public Law 280. *Barona Group of Capitan Grande Band v. Duffy, supra.* In contrast to the facts in *Farris,* in which the particular State gambling statutes involved were directed at conduct (casino-type gambling) which had been found to be contrary to State public policy and therefore fell squarely within the OCCA definition of a "gambling business" in "violation of the law of

[the] state",[21] the court concluded that California's bingo laws were not directed at criminal conduct as intended under Pub.L. 280, but were, for those purposes, civil in nature. Again, the court looked at the nature of the statutes themselves, noting that bingo was available to tax-exempt organizations of diverse kinds (i.e., fraternal societies, recreational clubs, senior citizen organizations, real estate boards and labor and agricultural groups), that there was no general prohibition against the general population's engaging in the act of playing bingo, and that bingo was permitted to be played as a money-making venture. *Id.*, at 1189. The court also noted that even though the statutory scheme was not strictly a licensing or revenue-raising program, *Butterworth* was correct in its observation that "[r]egulation may appear in forms other than licensing, and the fact that a form of gambling is self-regulated as opposed to state-regulated through licensing does not require a ruling that the activity is prohibited." *Id.*, at 1190, fn. 6.

B. The Civil Provisions of Public Law 280

Having established that California's bingo statutes were not criminal within the meaning of Pub.L. 280, the *Barona* and *Cabazon* courts next turned to an analysis of whether the bingo statutes, as civil laws, were enforceable under the civil provisions of Pub.L. 280 (28 U.S.C. § 1360). As in the criminal law context, examination of the Congressional intent of the federal statute against the backdrop of tribal sovereignty was examined, utilizing this Court's analysis in *Bryan v. Itasca County, supra,* for guidance.

---

[21] 18 U.S.C. § 1955; *United States v. Farris, supra,* 624 F.2d at 895.

In *Bryan*, this Court found no authority under which a State governed by Pub.L. 280 could impose its regulatory laws upon an Indian reservation. Explicating the language, intent and history of Pub.L. 280, this Court reiterated the "policy of leaving Indians free from State jurisdiction and control [which] is deeply rooted in the Nation's history. . . ." *Id.*, at 376, n. 2. The question addressed was whether the State of Minnesota had the authority to levy a personal property tax on the mobile home of an enrolled member of the Minnesota Chippewa tribe residing on land held in trust by the United States for the benefit of the tribe. This Court unanimously held that neither the defendant County nor State had the authority to levy such a tax in the absence of specific congressional consent, and that references to a State's civil laws in Pub.L. 280 were not a Congressional grant of power enabling the State to exercise its general regulatory powers, *including* taxation, over reservation Indians. *Id.*, at 387, 388.

In reaching that result, the particular language of the civil portions of Pub.L. 280 was examined, paying special attention to Section 4, subsection (a). The primary intent of this provision was found to be to "redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the state to decide such disputes. . . ." *Id.*, at 383. This court observed that a fair reading of this statutory language suggests

> "that Congress never intended 'civil laws' to mean the entire array of state noncriminal laws, but rather that Congress intended 'civil laws' to mean those laws which have to do with private rights and status. Therefore, 'civil laws . . . of general application to

> private persons or private property' would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws." *Id.*, at 384, fn. 10, quoting from Israel and Smithson, *Indian Taxation, Tribal Sovereignty and Economic Development,* 94 N.D.L. Rev. 267, 296 (1973).

In analyzing the language of Pub.L. 280, this Court observed "the absence of anything remotely resembling an intention to confer general civil regulatory control over Indian reservations". *Id.*, at 384.

Examining other considerations, including present-day Congressional policy toward reservation Indians, this Court found that Pub.L. 280 "was plainly not meant to effect total assimilation." *Id.*, at 387. The danger of imposing State regulation on a reservation was also described:

> "And nothing in its legislative history remotely suggests that Congess meant the Act's extension of civil jurisdiction to the States should result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than 'private, voluntary organizations,' *United States v. Mazurie,* 419 U S 544, 557, 42 L Ed 2d 706, 95 S Ct 710 (1975) — a possible result if tribal governments and reservation Indians were subordinated to the full panoply of civil regulatory powers, including taxation, of state and local governments." *Id.*, at 388.

The *Bryan* Court examined other Acts of the same Congress that passed Pub.L. 280, and concluded:

> "[C]onstruing Pub.L. 280 in pari materia with these Acts shows that if Congress in enacting Pub.L. 280 had intended to confer upon the states general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." *Id.*, at 390.

Appellants and their *amici* are therefore incorrect when they seek to discount the finding of this Court in *Bryan* as *dictum* regarding the power of a state to exercise general civil regulatory control over Indian reservations. Brief of the Appellants, at 9, 35-37. In fact, this Court was following established precedent in examining the Congressional intent behind Pub.L. 280 before determining that the type of State law in question could not have been intended by Congress to be included within either Pub.L. 280's criminal or civil provisions, particularly with respect to the latter if to do so would extend a State's regulatory authority over a reservation in conflict with strong Congressional policy.

Thus, cases decided subsequent to *Bryan*, including *Barona* and *Cabazon*, have continued to turn on this kind of an analysis. Where a State law has been found to be "criminal" under Pub.L. 280, thereby confirming the State's jurisdiction over a reservation for its enforcement, the question of whether it is also "regulatory" simply becomes irrelevant. *See, e.g., United States v. Marcyes, supra; United States v. Farris, supra.* But with respect to those cases decided after *Bryan* which held the State bingo laws under consideration not to be "criminal" within the meaning of Pub.L. 280, the further examination of whether they were within Pub.L. 280's civil provisions simply followed *Bryan* in examining whether their importation onto reservations was the kind of civil jurisdiction envisioned in Pub.L. 280. With respect to bingo

statutes, the cases have uniformly held that such regulation would conflict with *Bryan. Seminole Tribe of Florida v. Butterworth, supra; Barona Group of Capitan Grande Band of Mission Indians v. Duffy, supra; Oneida, supra; Mashentucket Pequot Tribe v. McGuigan*, 13 ILR 3031 (D. Conn. 1986); and *Cabazon, supra.* To have found otherwise would have been to impose on tribes the requirement that they comply with various State regulations which this Court has held would merely relegate the tribe to being little more than a "private, voluntary organization." *Bryan v. Itasca County, supra*, 426 U.S. at 388.

Appellants have argued, however, that this Court's decision subsequent to *Bryan*, in *Rice v. Rehner*, 463 U.S. 713 (1983), now compels a different result. We disagree. *Rice* is entirely consistent with the analysis which has been applied to every case cited, including *Cabazon* and *Barona*. In *Rice*, which did not involve a State subject to Pub.L. 280, the issue was whether a federally licensed Indian trader who was selling liquor on a reservation was subject to State liquor licensing laws. The trader, Rehner, had sought a declaration that under 18 U.S.C. § 1161, a federal statute permitting sales of liquor on reservations provided such sales comply with tribal ordinances and "State law", that term did not include "regulatory" liquor laws of the State such as those compelling the licensing of sellers.

This Court employed the same approach in interpreting § 1161 as courts have traditionally utilized in determining the meaning of other federal laws relating to the possible importation of State jurisdiction over Indian affairs, i.e., to examine the congressional intent involved, utilizing tribal sovereignty as an essential "backdrop against which the applicable treaties and federal statutes must be read" (*McClanahan v. Arizona Tax Commission, supra,*

411 U.S. at 172). After conducting such an analysis, this Court concluded that, unlike Pub.L. 280, the regulatory provisions of a State's liquor laws *were* intended to be included within § 1161; *i.e.*, that there was no historical basis for construing § 1161 as intending to distinguish between or exclude those State liquor laws which are regulatory and those which are not (i.e., those which are "substantive" in nature). *Rice v. Rehner, supra*, 463 U.S. at 734, n. 18. There is nothing in *Rice* to suggest, however, that the basic determination of whether or not a statute is or is not regulatory, as discussed in *Bryan*, has moved beyond the reach of the court. *Rice* simply held that the distinction was not pertinent to its analysis of § 1161. That case therefore neither extends the law nor conflicts with decisions which preceded it in analyzing the wording and history of federal statutes which apply to Indians. Moreover, *Rice* in particular has no special significance to an analysis of Pub.L. 280, since having found that § 1161 applied and therefore invoked the State's jurisdiction, this court properly refused to consider the further applicability of Pub.L. 280. Id., at 717, n.6.

V

CONCLUSION

In *Cabazon*, as in *Barona, Butterworth, Marcyes, Farris*, and *Oneida*, the analysis employed was identical to that followed in *Bryan* and *Rice*. The courts were compelled to determine whether or not a federal statute (in *Cabazon*, Pub.L. 280), in light of the backdrop of tribal sovereignty as well as other traditional considerations of Congressional intent, was meant to cover bingo statutory schemes which were only facially criminal and, if merely civil instead, potentially conflicted with Congress' policy of Tribal sovereignty. Given the kind of innocuous conduct

in question and the findings by all federal courts which have considered the impact on, and interference with, legitimate tribal activities and self-government which imposition of these State regulatory schemes were found to have, these courts correctly determined, consistent with *Bryan* and *Rice*, that the State bingo laws in issue were not the kinds of statutes intended to be included within the meaning of either the civil or criminal provisions of Pub.L. 280. That conclusion in no way removes or even affects those law enforcement tools which may be necessary to prevent the commission of the kinds of crime feared by appellants. We respectfully submit it is to those potential crimes, *not* the playing of bingo, to which their attention should be directed. We respectfully request that the *Cabazon* decision be affirmed.

DATED: September 22, 1986

Respectfully submitted,

JEROME L. LEVINE
DAVID A. LASH
NEIMAN BILLET ALBALA & LEVINE
A Professional Corporation
Attorneys for Amicus Curiae
San Manuel Band of Mission
Indians

NON-COMMISSIONED OFFICERS' OPEN MESS

NORTON AIR FORCE BASE, CALIFORNIA 92409

BINGO PROGRAM

GAME	TYPE	PRIZE
1	BONANZA BINGO - COVERALL IN 48 NUMBERS	$2,500 Savings Bond
2	SPEEDY- STRAIGHT BINGO (6 Games), NO CORNER BINGOS -CALLED FAST	80% of Sales
3	YELLOW SPECIAL - DOUBLE BINGO (NO CORNERS)	75% of Sales
4	HARD CARDS - STRAIGHT BINGO	$50.00
5	HARD CARDS - STRAIGHT BINGO CORNERS COUNT	$50.00
6	HARD CARDS - SIX PACK BINGO	$50.00
7	HARD CARDS - SMALL PICTURE	$50.00
8	GREEN SPECIAL - LUCKY "7"	70% of Sales
9	BLUE SPECIAL - LETTER "X"	70% of Sales
INTERMISSION	INTERMISSION	INTERMISSION
	DOOR PRIZE DRAWINGS AFTER INTERMISSION EACH WEEK	
10	RED SPECIAL - CRAZY T - 50¢ each	70% of Sales
11	BROWN SPECIAL - CRAZY L - 50¢ each	70% of Sales
12	HARD CARDS - STRAIGHT BINGO	$50.00
13	HARD CARDS - CRAZY BINGO- STRAIGHT BINGO CORNERS COUNT	$50.00
14	CONTINUE FOR LETTER X	$50.00
15	CONTINUE FOR LARGE PICTURE FRAME	$50.00
16	CONTINUE FOR COVERALL BINGO	$75.00 to $250.00
17	ORANGE SPECIAL - BLOCK OF NINE	70% of Sales
18	PURPLE SPECIAL - JACKPOT BINGO _____ #s OR LESS PROGRESSIVE EACH WEEK _____ #s OR LESS CONSOLATION PRIZE NOTE: When $1000. Jackpot is won, $1000 goes to 50 #s. and $500. is back to 54 #s	$1000.00 $500.00 $150.00 to $250.00
19	WINNER TAKE ALL SPECIAL (OLIVE SPECIAL) 50¢ each	100 % of take

NOTE: In the event the NCO Club is used for a special function on Tuesday night Bingo will be held at the Galaxy Recreation Center!

NON-COMMISSIONED OFFICERS' OPEN MESS

NORTON AIR FORCE BASE, CALIFORNIA 92409

BINGO RULES

1. BINGO CARDS WILL GO ON SALE AT 1730 HOURS.

2. PAPER CARDS WILL SELL FOR THE PRICE STATED FOR THAT PARTICULAR GAME.

3. YOU MUST HAVE THE LAST NUMBER CALLED WITHIN THE GAME PLAYED TO WIN.

4. NO WINNER RECOGNIZED AFTER A GAME IS CLOSED.

5. SPECIAL CARDS MAY NOT BE TORN APART. USE INK MARKERS ONLY.

6. IN THE EVENT OF TIES, THE AMOUNT WILL BE EQUALLY DIVIDED AMONG ALL WINNERS.

7. PARTICIPANTS MUST BE BONAFIED MEMBERS IN GOOD STANDING. YOUR CLUB CARD MUST BE STAMPED CURRENT. YOU MAY NOT HAVE YOUR CARD UPDATED AFTER WINNING IN ORDER TO COLLECT PRIZE.

8. ALL GUESTS MUST BE SIGNED IN. PERSONS ELIGIBLE FOR MEMBERSHIP IN THE CLUB MAY NOT BE SIGNED IN AS GUESTS.

9. WINNERS OF GAMES WITH PRIZES OF MORE THAN $150.00 MAY COLLECT THEIR CHECKS AT THE NCO CLUB OFFICE ON FRIDAY AFTER 1500 HOURS.

10. MINIMUM PURCHASE OF 3 HARD BOARDS @ $2.50 IS REQUIRED TO PLAY ANY BINGO GAMES.

11. TICKETS MUST BE PRESENT ON THE TABLE WITH YOUR CARDS, OTHERWISE YOUR BINGO CANNOT BE HONORED.

12. CARD PRICES: HARD BOARDS, MINIMUM PURCHASE OF 3 @ $2.50

SPECIAL PACKAGES: 8 HARD BOARDS, 7 SPECIAL & 1 SET SPEEDY $10.50

15 HARD BOARDS, 7 SPECIALS & 1 SET SPEEDY $11.50

AFTER PURCHASE OF 15 HARD CARDS, CARDS ARE 3 FOR $1.00

13. YOU MUST BE 18 YEARS OF AGE TO PLAY BINGO.

14. BINGO CALLER RESERVES THE RIGHT TO CHANGE ANY GAME.

15. IN ORDER TO HOLD A SEAT, IT MUST BE PURCHASED WITH A MINIMUM BUY-IN TICKET OF $2.50. NO EXCEPTIONS.

AUG 86' — GALAXY RECREATION CENTER NORTON AFB, CA.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
AEROBIC/ EXERCISE MORALE, WELFARE AND RECREATION			JOIN the FUN!	Information TICKETS & TOURS MAC	DISCO With SANDY FOUTCH	2 DISCO TOUR BEVERLY HILLS QUEEN MARY
KEN BARRY'S 3 MUSIC WORKSHOP 7-10	CO-ED 4 Aerobics MON-THU FRI 6-8	DOG OBEDIENCE 5 6-8 TANG-SOO-DO 6-8	NOONTIME 6 Aerobics MON-WED-FRI 11:30 - 1230	BINGO 7 6:45 TANG-SOO-DO 6-8	DISCO 8 MATT N JACK	DISCO 9
Summer Savings 10 BUY YOUR DISCOUNT TICKETS $	TRY OUR 11 SNACK BAR	DOG OBEDIENCE 12 6-8 TANG-SOO-DO 6-8	MAKE YOUR RESERVATIONS EARLY FOR LAKE ISABELLA	BINGO 14 TANG-SOO-DO	TOUR LAS VEGAS 15 9-1 DISCO JUMPIN SONNY	TOUR 16 L.A. DELUXE DISCO 9-1
KEN BARRY'S 17 MUSIC WORKSHOP 7-10	CHECKERS 18 tournament 6:30	DOG OBEDIENCE 19 6-8 TANG-SOO-DO 6-8	BIRTHDAY PARTY 20 for LEO & VIRGO'S	BINGO 21 6:45 TANG-SOO-DO 6-8	DISCO 22 9-1 WITH SANDY FOUTCH	DISCO 23 9-1
TOUR / OFFICE 29 31	TAKES YOU PLACES! 25	DOG OBEDIENCE 26 6-8 TABLE TENNIS 6 PM OPEN MIKE TALENT NIGHT 8 PM	POOL 27 tournament 6 PM	BINGO 28 6:45 TANG-SOO-DO 6-8	DISCO 29 9-1 JUMPIN SONNY	DISCO 30 9-1

AUG 85' — YOUTH CENTER ACTIVITIES — NORTON AFB, CA.

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
YOUTH CENTER CLOSED ON SUNDAYS	**TUTORING** Classes MON - WED - FRI ~ 10 am				1 PEE WEE KARATE EVERY FRI - 5PM TEEN & ADULT KARATE TEEN SPLASH PARTY & FAMILY POOL 7:30 PM	2 YOUTH CENTER OPEN 9AM - 3PM GYMNASTICS LESSONS EVERY SATURDAY 11:30 - ADVANCE 1:00 - BEGINNER
3 CENTER CLOSED	4 PEE WEE KARATE EVERY MONDAY 5 TEEN & ADULT KARATE EVERY MONDAY 6PM DAY CAMPERS AND TEEN VOLLEYBALL - 2PM	5 SPECIAL TREAT DAY ICE CREAM TEEN BINGO - 10 AM TEEN [illegible] - 2PM	6 PEE WEE KARATE EVERY WED - 5PM TEEN & ADULT KARATE EVERY WED - 6PM TEEN MOVIE DAY DAY CAMPERS TRIP - 9AM [illegible]	7 LIFE SKILL DAYS TEEN CERAMICS 10 AM TEEN TRIP 7-10 TO GRAND CANYON	8 TEEN DANCE 8-11PM TEEN BASKETBALL 2 PM GRAND CANYON AUG. 7-10	9 PIANO LESSONS EVERY SATURDAY BY APPOINTMENT
10 ON SUNDAYS FREE FREE FREE CLINICS	11 GYMNASTICS EVERY MONDAY 2:30PM DAY CAMPERS MOVIE DAY TEEN VOLLEYBALL 2 PM	12 LOLLIPOPS TEEN BINGO - 10 AM TEEN CRAFTS - 2PM	13 TRACK MEET 10:30 AM TEEN MOVIE DAY GYMNASTICS EVERY WED 1:30 PM	14 LIFE SKILL DAYS DAY CAMPERS TRIP TO SANTA'S VILLAGE TEEN CERAMICS - 10 AM	15 REGISTRATION DAY FOR FALL ACTIVITIES 2 PM - 5PM TEEN BEACH & BAR-B-QUE PARTY - 1PM TEEN BASKETBALL - 2PM	16 TEEN HIKE TO CYCLE CREEK YOUTH BOWLING LEAGUE BEGINS - 15 SEP
17 Challenge of the Seas ALL DAY DAY CAMPERS MOVIE DAY TEEN VOLLEYBALL 2 PM	18 SPECIAL TREAT DAY COOKIES TEEN BINGO - 10 AM TEEN [illegible] - 2PM	19 SWIM MEET 3PM TEEN MOVIE DAY SUMMER FUN ALL WEEK	20 LIFE SKILL DAYS TEEN CERAMICS 10 AM	21 TEEN TRIP MAGIC MT. - 10 AM - 10 PM TEEN BASKETBALL 2 PM KIDS FLEA MARKET 10AM - 11AM	22 COMING !! BOWLING SCHOOL FOR NEW BOWLERS at 9:30 AM	23
24 GOLF CLINIC 10 AM BASKETBALL CLINIC 2 PM	25 TEEN VOLLYBALL 2 PM DAY CAMPERS MOVIE DAY	26 SPECIAL TREAT DAY LOLLIPOPS TEEN CRAFTS - 2PM TEEN BINGO 10 AM	27 TEEN MOVIE DAY [illegible] FOOTBALL WEEK	28 LIFE SKILL DAYS	29 TEEN BEACH & BAR-B-QUE 1 PM DAY CAMPERS GRADUATION NOON [illegible] AND MARIONETTES NOON	30 YOUTH CENTER 12 HOUR LABOR DAY PARTY NOON - MIDNITE

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On September 22, 1986, I served the within Brief of the San Manuel Band of Mission Indians as Amicus Curiae in Support of Appellees in re: "State of California vs Cabazon Band of Mission Indians" in the United States Supreme Court, October Term 1985, No. 85-1708;

on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

JOHN K. VAN DE KAMP
Attorney General of the State of California

STEVE WHITE
Chief Assistant Attorney General

RODERICK E. WALSTON

FREDERICK R. MILLAR, JR.
Supervising Deputy Attorneys General

RUDOLF CORONA, JR.
Deputy Attorney General

6000 State Building

San Francisco, CA 94102

Attorneys for Appellant
State of California

GERALD J. GEERLINGS
County Counsel for Riverside County

PETER H. LYONS
Principal Deputy County Counsel

GLENN R. SALTER
Deputy County Counsel

3535 Tenth Street,

Suite 300

Riverside, CA 92501

Attorneys for Appellants
Riverside County, et al

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on September 22, 1986, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA